

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

EDWARD J. SMITH,

Plaintiff,

vs.

NEBRASKA WAREHOUSES
COMPANY,

Defendant.

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8:05CV81

ORDER

This matter is before the court in defendant's MOTION TO COMPEL (#24 as supplemented by #25). Moving counsel has complied with NECivR 7.1(i). The matter was heard on January 17, 2006 at the time of the parties' Rule 16 planning conference. Sean C. Bradley has entered his appearance as plaintiff's counsel.

On July 27, 2005, defendant served upon Plaintiff its First Set of Interrogatories and Request for Production of Documents. Plaintiff's prior attorney, James E. Mitchell, was subsequently given leave to withdraw, and the plaintiff has not yet responded to any of defendant's discovery requests.

I find that, by failing to timely respond, plaintiff has waived all objections to the discovery requests and that the Motion to Compel should be granted. Based on Mr. Bradley's representation that the plaintiff would respond to all the discovery requests, I find that an award of costs and fees should not be made at this time.

IT IS ORDERED that defendant's MOTION TO COMPEL (#24) is granted, as follows:

1. Plaintiff has waived all objections to the discovery requests at issue.
2. Plaintiff is given until **January 31, 2006** to provide complete responses to all of defendant's interrogatories and requests for production of documents. The responses must be signed and must, in all respects, comply with the requirements of Fed. R. Civ. P. 33 and 34.
3. The circumstances of this discovery dispute would make an award of expenses unjust and the court declines to award costs or fees to either party. See Fed. R. Civ. P. 37(a)(4)(B).

DATED January 17, 2006.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**